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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RICKY FRANCISCO LOPEZ,

Defendant and Appellant.

D062200

(Super. Ct. No. SCD239351)

APPEAL from a judgment of the Superior Court of San Diego County, Laura W.

Halgren, Judge. Affirmed in part; reversed in part with directions.

Ricky Francisco Lopez appeals a judgment following his felony convictions for selling methamphetamine (Health & Saf. Code, § 11379, subd. (a)) and grand theft (Pen. Code, § 487, subd. (a)). He contends the trial court erred in imposing penalty assessments in the amount of \$65 on the criminal laboratory analysis fee mandated under Health and Safety Code section 11372.5. Lopez further argues the minute order of his sentence and the abstract of judgment incorrectly reflect a \$570 drug program fee that was not imposed by the court. We reverse the imposition of the \$570 drug program fee. In all other respects, we affirm the judgment.

## FACTS<sup>1</sup>

On March 22, 2012, Lopez pled guilty to selling methamphetamine in violation of Health and Safety Code section 11379, subdivision (a), and grand theft in violation of Penal Code section 487, subdivision (a), with a stipulated sentence of two years eight months. On April 26, in addition to the stipulated sentence and other fines and fees not at issue in this appeal, the court imposed a \$190 criminal laboratory analysis fee. The court found that Lopez was unable to pay a \$570 drug program fee.

The April 26, 2012 minute order reflects a \$190 criminal laboratory analysis fee and a \$570 drug program fee. The abstract of judgment shows a \$50 criminal laboratory analysis fee and a \$570 drug program fee. Lopez timely filed a notice of appeal.

## DISCUSSION

### A

Health and Safety Code section 11372.5, subdivision (a) provides: "Every person who is convicted of a violation of [section 11379] shall pay a criminal laboratory analysis fee in the amount of fifty dollars (\$50) for each separate offense. The court shall increase the total fine necessary to include this increment." The criminal laboratory analysis fee is an increment of a fine subject to additional penalty assessments. (*People v. Sharret* (2011) 191 Cal.App.4th 859, 869; see *People v. Talibdeen* (2002) 27 Cal.4th 1151, 1153.)

Relying on *People v. Martinez* (1998) 65 Cal.App.4th 1511, 1520 (*Martinez*), Lopez contends the \$50 criminal laboratory analysis fee was subject only to penalty assessments of

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<sup>1</sup> Because the only issues raised on appeal relate to sentencing, we eliminate the facts underlying the crimes to which appellant pled guilty.

\$50 under Penal Code section 1464 and \$35 under Government Code section 76000 and thus the fee should have been \$135, not \$190. Had Lopez been sentenced for his crimes in 1998, his argument would have had merit. In 2012, however, additional penalty assessments applied to the criminal laboratory analysis fee.

The following state penalty assessments were enacted or approved after *Martinez* was decided:

- (1) A state surcharge of 20 percent on the base fine. (Pen. Code, § 1465.7, subd. (a) [added by Stats. 2002, ch. 1124, § 46, eff. Sept. 30, 2002].)
- (2) A state court construction penalty (\$5 for every \$10, or portion thereof, on every fine, penalty or forfeiture imposed in all criminal offenses). (Gov. Code, § 70372, subd. (a)(1) [added by Stats. 2002, ch.1082, § 4].)
- (3) A penalty to support county emergency medical services (\$2 for every \$10, or portion thereof, on every fine, penalty or forfeiture imposed in all criminal offenses). (Gov. Code, § 76000.5, subd. (a)(1) [added by Stats. 2006, ch. 841, § 1].)
- (4) A penalty to support the state's DNA Identification Fund (prior to June 27, 2012, \$3 for every \$10, or portion thereof, on every fine, penalty or forfeiture imposed in all criminal offenses). (Gov. Code, § 76104.7, subd. (a) [added by Stats. 2006, ch. 69, § 18, eff. July 12, 2006].)
- (5) A penalty to implement the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69) (\$1 for every \$10, or portion thereof, on every fine, penalty or forfeiture imposed in all criminal offenses). (Gov. Code, § 76104.6, subd. (a)(1) [added by Initiative Measure (Prop. 69, § IV, approved Nov. 2, 2004, eff. Nov. 3, 2004].)

Here, the \$190 criminal laboratory analysis fee imposed by the court includes the \$50 base fee under Health and Safety Code section 11372.5, the \$50 surcharge under Penal Code section 1464 and the \$35 surcharge under Government Code section 76000 (totaling \$135). It also includes the following assessments set forth above totaling \$55: (1) \$10 base fine

surcharge (Pen. Code, § 1465.7, subd. (a)); (2) \$25 state court construction penalty (Gov. Code, § 70372, subd. (a)(1)); (3) \$10 county emergency medical services penalty (Gov. Code, § 76000.5, subd. (a)(1)); (4) \$5 DNA Identification Fund penalty (Gov. Code, § 76104.7, subd. (a)); and (5) \$5 penalty under Proposition 69.

Accordingly, the trial court did not err when it imposed a criminal laboratory analysis fee in the amount of \$190.

## B

Lopez also contends, and the People correctly concede, the minute order of his sentence and the abstract of judgment incorrectly list a \$570 drug program fee that was not imposed by the court. Health and Safety Code section 11372.7, subdivision (a) provides that except as otherwise provided in subdivision (b) or (e), each person who is convicted of this chapter shall pay a drug program fee. If the court determines that the person does not have the ability to pay, the person shall not be required to pay a drug program fee. (Health & Saf. Code, § 11372.7, subd. (b).)

Here the court explicitly found that Lopez did not have the ability to pay the drug program fee. Generally, the record of the trial court's oral pronouncement prevails over the clerk's minute order. (*People v. Mesa* (1975) 14 Cal.3d 466, 471.) A discrepancy between the reporter's transcript and the clerk's minutes is presumed clerical error. An appellate court may correct clerical errors at any time to ensure court records accurately reflect the pronounced judgment of the trial court. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-186.) The clerk's minute order and abstract of judgment incorrectly reflect the imposition of a \$570 drug program fee.

## DISPOSITION

The judgment is modified to strike the \$570 drug program fee and change the amount of the criminal laboratory analysis fee, including penalty assessments, from \$50 to \$190. The court is directed to amend the abstract of judgment to reflect modification and forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. In all other aspects, the judgment is affirmed.

HALLER, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.